XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

H.E.R.

मामला क्रमांक G.A.140/.... **सन्** 200 7

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANT: (In jail)	Prafull Pandey alias Raju Aged about 40 years, S/o Parasram Pandey, R/o Village: Pondi, Police Station: Takhatpur, District: Bilaspur (C.G.)
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through Police Station Takhatpur District Bilaspur (C.G.)

Present:

Miss. Nirupama Bajpai, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

Division Bench: Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 21st March, 2007)

L.C. BHADOO, J.

Heard on M.(Cri.)P.No.387/2007, application for condonation of delay in filing the appeal as well as on admission.

As per the Office report, there is delay of 2,333 days in filing of this appeal.

It has been mentioned in the application for condonation of delay that copy of the judgment was taken by relative of the appellant for filing the appeal, therefore, the appellant was under the bona fide belief that the

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 140/ **सन्** 200 7

(42)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appeal has been filed, but later on, when he enquired from the High Court, no appeal has been filed. Therefore, there is delay in filing of the appeal. In this application, name of the relative to whom copy of the judgment was given has not been mentioned, as to when the enquiry was made from the High Court about filing of the appeal and who made the enquiry from the Registry of the High Court about the filing of the appeal has also not been mentioned. Therefore, no sufficient ground has been shown for condonation of delay in filing the appeal, that too of 2,333 days i.e. 6 years 5 months 23 days.

On merit also, we have heard learned counsel for the parties, perused the judgment and record of the trial Court.

It is the case of the prosecution that in the intervening night of 7th & 8th June, 1998 at about 12 mid night Mahendra Kumar, brother of the accused, raised cries that there is fire in the house, therefore, Kadi Shankar (PW-9) and other persons went to the house of Mahendra Kumar where accused/appellant Prafull & his wife Aruna were also residing. Kadi Shankar (PW-9) saw that Aruna's body was lying near the gate of the house and was burning. The accused was inside the house. On enquiry, Mahendra Kumar informed that the accused is inside the house, by that time, Aruna was already dead and there was no motion in the body. Kadi Shankar called Prafull who came out of his room, he asked Prafull to extinguish the fire on which the accused brought water in a bucket and poured on the body of Aruna on which he asked the accused that he should try to extinguish the fire with clothes not with water, the accused brought clothes and extinguished the fire.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 140/.... **सन् 2007**

(43)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	After reporting the matter to the Police, the Investigating Officer came on the spot. Inquest on the body Ex.P-2 was prepared in the presence of Bhagwati Bai, Baldau Prasad, Ram Sahay, Manharan Nirmalkar, Shanti Bai – mother of the deceased and Virendra – brother of the deceased. It has been mentioned in the inquest report that whole body was burnt, tongue was protruding and same was between the teeth. When the body was turned it was seen that back portion was not fully burnt. Post-mortem was conducted by Dr. V.K. Soni, Dr. G.P. Naidu & Dr. Smt. S. Jitpure, they prepared the post-mortem report Ex.P-5 and said that no definite opinion can be given regarding cause of death. Dr. V.K. Soni (PW-4) has been examined who has stated in his evidence that smell of kerosene was emanating from the body, there were burn injuries up to 100%, there were no blisters on the body, the burn injuries were up to 2nd & 3rd degree, tongue of the deceased was protruding and same was between the teeth. There were no carbon particles in the trachea. In para 9 he has stated that in this case, various parts were congested and on account of asphyxia death occurred. He has further stated that generally tongue protrudes on account of asphyxia. In the light of above inquest report, post-mortem report and the evidence of Dr. V.K. Soni, if we peruse the evidence of Kadi Shankar (PW-9) who has stated in his evidence that at about 11-11.30 in the night he heard the sounds of Mahendra Kumar, brother of the accused, that there is fire, therefore, he went to the house of Mahendra Kumar, as Mahendra Kumar and accused Prafull are residing in the same house, he saw that Aruna's body was lying on the gate, it was burning and the accused was inside the house. On enquiry, Mahendra Kumar said that Prafull is inside the house. In the mean time, Chhedi, Ram Sahay and	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.140/.... **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

other neighbours also came, by that time, Aruna was already dead and motionless. He called Prafull who came out of the house and he asked Prafull to extinguish the fire on which the accused brought water in a bucket and poured on the body of Aruna, he told the accused that he should try to extinguish the fire with clothes not with water, the accused brought clothes and extinguished the fire.

The accused was present in the house, when the body of Aruna was burning. He came out of the room only after he was called by Kadi Shankar (PW-9). In his statement under Section 313 of the Cr.P.C., the accused has not explained the circumstances under which Aruna sustained burn injuries, he has simply stated that he is innocent and has been falsely implicated. When he was in the house it was within his special knowledge that how Aruna sustained burn injuries, but he has preferred to remain silent. Therefore, he failed to discharge the burden lying on him under Section 106 of the Evidence Act. Conduct of the accused is also admissible in evidence when Aruna was burning and she sustained burn injuries up to 100%, therefore, it was not possible for any person to raise cries while burning, why he remained in the house when Aruna was burnt has not been explained by him in any manner.

Coupled with the above facts, if we scrutinize the evidence of Dr. V.K. Soni he has stated in his evidence that there was smell of kerosene emanating from the body, the burn injuries were up to 2nd to 3rd degree, parts of the body were congested, tongue was protruding, same was between the teeth, no carbon particles were found in the trachea and in para 9 he has stated that symptoms of death shows asphyxia. As per the evidence of Kadi Shankar (PW-9) when he went to the place of incident,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.140/.... सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the body of the deceased was motionless. All these circumstances are suggestive of the fact that the deceased died on account of asphyxia and thereafter she was set on fire. The inquest report shows that back portion was not fully burnt, this also shows that the body was motionless that is why the back portion was not fully burnt.

Therefore, we are of the considered opinion that Aruna was set on fire after her death due to asphyxia. The accused was in house, he has not explained any thing, as such, he has rightly been convicted for commission of offence under Section 302 of the I.P.C. In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court.

In the result, this appeal is liable to be dismissed on the ground of delay as well as on merit, at the admission stage itself. Ordered accordingly.

Consequently, M.(Cri.)P.Nos.386/2007 & 387/2007 stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Sd/-
L.C. Bhadoo
Judge